

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHRISTOPHER BANKS, #238790,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 2:08-CV-910-TMH
) [WO]
)
JAMES DELOACH, et al.,)
)
Defendants)

RECOMMENDATION OF THE MAGISTRATE JUDGE

Christopher Banks [“Banks”], a state inmate, filed the instant action in which he seeks to have the United States Attorney for the Middle District of Alabama initiate a criminal complaint against correctional officials for actions undertaken during his confinement at the Draper Correctional Facility. On November 25, 2008, Banks filed a traverse in which he seeks dismissal of this case as “the action ... was wrongfully activated.” *Court Doc. No. 3.* The court construes this document to contain a motion to dismiss.

Upon consideration of the motion to dismiss, the court concludes that this motion is due to be granted. Furthermore, since the action has not been served on the defendants, the court discerns that this case should be dismissed without prejudice. Rule 41(a)(1), *Federal Rules of Civil Procedure.*

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the plaintiff’s motion to dismiss be granted and that this case be dismissed without prejudice.

It is further

ORDERED that on or before December 15, 2008 the plaintiff may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). See *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). See also *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 2nd day of December, 2008.

/s/ Wallace Capel, Jr.

WALLACE CAPEL, JR.

UNITED STATES MAGISTRATE JUDGE